QUESTIONS AND ANSWERS ABOUT THE PROPOSED REINTRODUCTION OF 2 FEDERALLY LISTED FISH UNDER NONESSENTIAL EXPERIMENTAL POPULATION STATUS IN SHOAL CREEK, LAWRENCE COUNTY, TENNESSEE AND LAUDERDALE COUNTY, ALABAMA

1. **What does a nonessential experimental population designation mean**?

It is a classification under the Endangered Species Act that precludes anyone who accidentally kills or harms a threatened or endangered species from being in violation of the law, provided that the "take" occurs as part of an otherwise lawful activity. Similarly, Federal or federally funded projects will not be required to be altered or stopped to protect the species. The classification is designed to make it easier to reintroduce these species into habitats they formerly occupied, as part of the efforts to recover their population so that they no longer need the protection of the ESA.

Under this proposal, two native fishes – the threatened spotfin chub and endangered boulder darter – will be reintroduced into Shoal Creek, which flows through Lauderdale County, Alabama, and Lawrence County, Tennessee.

2. **Why has the Service developed this proposed rule to designate nonessential experimental population status for the boulder darter and spotfin chub**?

This action could lead to reestablishing these species in Shoal Creek from the mouth of Long Branch in Tennessee to the backwaters of the Wilson Reservoir in Alabama. It was developed at the request of the Commissioner of the Alabama Department of Conservation and Natural Resources and the Executive Director of the Tennessee Wildlife Resources Agency and is part of a major partnership effort managed by State, Federal, and non-governmental organizations to help recover these imperiled fishes. The goal of this action is to improve the status of these species to the point where Endangered Species Act protection is no longer required.

3. **Do Service recovery plans support this action**?

The objectives in the recovery plans for the boulder darter and spotfin chub state that to reach recovery: (1) existing populations should be restored to viable levels, (2) the species should be protected from threats to their continued existence, and (3) viable populations should be reestablished in historical habitat. The number of secure, viable populations (existing and restored) needed to achieve recovery varies from species to species, depending on the extent of the species' former range (i.e., species that were once widespread require a greater number of populations for recovery than species that were historically more restricted in distribution).

However, a critical component of recovery is the reestablishment of historical populations.

4. **Why was Shoal Creek in Tennessee and Alabama chosen for the nonessential experimental population**?

Researcher*s* concluded that about 20 creek miles of Shoal Creek above the backwaters of the Wilson Reservoir appeared to contain suitable reintroduction habitat for both fishes. The boulder darter and spotfin chub were last collected from Shoal Creek in the 1880s, and since then both were apparently extirpated from this reach. Now, the quality of the remaining fish habitat and its biological resources have improved, the technology exists to propagate rare fishes, and the necessary partnerships are in place to initiate this project.

5. **Where will the two fishes be released**?

They will be released into historical habitat in the free-flowing reach of Shoal Creek from between creek mile 33 and creek mile 14. This reach is totally within the proposed nonessential experimental population area, and it contains the most suitable habitat for reintroductions. Neither species currently exists in Shoal Creek or its tributaries

6. **What if the two fishes move from the release site**?

To ensure that any reintroduced species that may move are covered by the nonessential-experimental population designations, the nonessential-experimental population boundaries will extend from the mouth of Long Branch, Lawrence County, Tennessee (Shoal Creek mile 41.7), downstream to the backwaters of the Wilson Reservoir at Goose Shoals, Lauderdale County, Alabama (approximately creek mile 14.0). The designation includes the lower 5 creek miles of all tributaries that enter this reach. In the future, if any of these fishes are found upstream beyond the lower 5 river miles of these tributaries or downstream, the Service will presume the animals came from the reintroduced populations. It will then propose to amend the rule to extend the NEP area boundaries to include the entire range of the expanded population.

7. **When will the fishes be reintroduced, where will they come from, and how many will be released?**

The Service has not yet determined when the animals will be reintroduced, where they will come from, or the number of individuals to be reintroduced. The Service anticipates that the fishes to be used in the reintroductions will be primarily artificially propagated juveniles. Spotfin chub and boulder darter propagation and juvenile rearing technology are available. The parental stock of the juvenile fishes for proposed reintroduction will come from existing wild populations. In some cases, the parental stock for juvenile fish may be returned back to the same wild population. Generally, the parents are permanently held in captivity.

8. **Does the Service intend to change the nonessential experimental populations from "nonessential" to "essential"?**

It is unlikely that the Service would propose to change these nonessential experimental population classifications to "essential." Any changes that might be necessary would occur with the full cooperation of the States and other affected parties within the nonessential experimental population and would require going through the Federal rule-making process. These reintroductions are part of a series of reintroductions and other recovery actions that Federal and State agencies and other partners are considering and conducting throughout the species' historical ranges. The only likely change would be if the species recover and are delisted, in which case the "non-essential experimental population" designation would be eliminated as part of the delisting.

9. **What impact will this nonessential experimental population have on the public's use of the river and on Federal agencies**?

The Service does not believe these reintroductions will conflict with public use of the nonessential experimental population areas.

Similarly, throughout the entire nonessential experimental population area, no Federal agency or its contractors will be in violation of the Act for take of these species resulting from any authorized agency action.

10. **What activities are allowed within the nonessential experimental population area?**

Regulatory relief is provided regarding take of reintroduced species within nonessential experimental population areas. A special rule is included with this designation stipulating that there will be no violation of the Act for unavoidable and unintentional take (including killing or injuring) of these reintroduced fishes, when:

- such take is accidental and incidental to an otherwise lawful activity (for example agricultural activities and recreational activities such as fishing, boating, wading, swimming, or trapping). And,
- the activity is in accordance with Federal, State and local laws.

11. **What activities will be prohibited because of this nonessential experimental population area?**

It remains illegal to deliberately "take" or harm these species, which generally would occur if they are taken or possessed in violation of the applicable State fish and wildlife laws or regulations. In other words, fishing in violation of State laws or regulations which results in catching these fish, or polluting these waters in violation of State or Federal law, could result in additional penalties for harming the fish; but fishing and other activities conducted legally will not result in penalties if they happen to result in catching or otherwise harming the fish.

12. What will the Service do for these species after they are released?

After the first initial stocking of these two fish, the Service will monitor them annually and document any spawning behavior or young of the year fish that might be present. The Service will contract with the appropriate species experts, who will monitor the fish using snorkels or seines. Annual reports will detail the stocking rates and monitoring activities that took place during the previous year. The Service will prepare periodic progress reports and fully evaluate these reintroduction efforts after five and 10 years to determine whether to continue or end the project. The Service will work cooperatively with Federal, State and local agencies and willing private landowners to continue to improve the species habitat.

13. **Aren't there already existing nonessential experimental populations of these fish? Why do we need another one?**

The Service previously established nonessential experimental population status for the spotfin chub and three other federally listed fishes (not including the boulder darter) in the Tellico River, Tennessee on Aug. 12, 2002 (67 FR 52420). Reintroductions of the spotfin chub were initiated in 2003 along with the first reintroductions of the remaining three fish species. These reintroduced fish are being monitored. The Service believes the Tellico River can support viable populations of each of these for four fish. The viable populations of spotfin chub that were established in the Tellico River under the previous regulation and that will be established in Shoal Creek if this regulation is finalized will help the species to recover by extending their present ranges into currently unoccupied habitat that was once occupied by the fish. Establishing populations of the different fish species in different locations, so no one event could likely cause their extinction, is an essential element of the strategy to recover them so that they no longer need the protections of the Act.